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SUBJECT: IN LANDMARK CASE, DUESSELDORF COURT CONVICTS THREE FOR
SUPPORTING AL-QAEDA

REF: A) DUESSELDORF 30; B) DUESSELDORF 22

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¶1. (U) After a trial lasting more than 18 months, the Duesseldorf Higher Regional Court on December 5 convicted Syrian national Ibrahim Mohamed Khalil (32) and the Palestinian brothers Yasser Abu Shaweesh (34) and Ismail Abu Shaweesh (30) for belonging to and/or supporting al-Qaeda -- AQ (Ref B). Khalil, an asylum seeker whose nationality has since been established as not Iraqi as he previously claimed, and the elder Shaweesh, a former medical student, received seven and six year terms, respectively, for belonging to AQ, attempting to recruit combatants, attempting to purchase 48 grams of radioactive material for a "dirty bomb," and committing 28 counts of insurance fraud valued at more than 4.3 million euros for the benefit of AQ (about 20 percent of which was destined for AQ, with the remainder going to their private consumption). The younger Shaweesh, who received a three and one half year term for a more diffuse form of support for AQ and for complicity in insurance fraud, was released following the sentence because German law allows the release of a person who has served 2/3 of his/her sentence while in detention. The trial, which took place on 131 separate days and included testimony from more than 200 witnesses, was repeatedly delayed by procedural and other maneuvers.

¶2. (U) The defense immediately lodged an appeal, in part arguing that evidence derived from electronic eavesdropping is unconstitutional and that legal requirements, including in the state of Rhineland Palatinate, were not properly followed. Higher Regional Court Press Spokesman Dr. Ulrich Thole told the CG December 6 that the Appeals Court in Karlsruhe will issue a final written decision by June 2008, which will also cement the legality of this (oral) verdict.

Landmark Case

¶3. (SBU) Calling the sentences a "path breaking decision," Presiding Judge Ottmar Breidling said the case was the first in Germany in which defendants have been convicted of membership in a foreign terrorist organization, a crime that became law in August 2002. Thole confirmed that this was also the first terrorism case in Germany in which law enforcement and judicial authorities successfully used evidence derived from secret electronic eavesdropping of defendants' private living quarters in obtaining convictions. He added that the eavesdropping was critical to obtaining the verdict, but that it also presented challenges (e.g. audibility, language issues, and relevant evidence gathered during Muslim prayer, which is protected). The eavesdropping was made possible by a 16 January 1998 Bundestag law amending the German constitution and enabling

authorities to monitor individuals' living quarters.

¶4. (U) Note: The 1998 law is widely referred to in Germany as "der grosse Lauschangriff," whose literal translation -- "major bugging attack" -- only awkwardly captures the negative manner in which many German commentators in politics and the media refer to it. On March 2, 2004, the Constitutional Court in Karlsruhe ruled that the 1998 law was indeed constitutional, but required that several aspects of law needed to be amended, which the Bundestag did on June 24, 2005. This law is not to be confused with the "kleine (minor) Lauschangriff," which permits eavesdropping in public places. End Note.

Comment

¶5. (SBU) This verdict is a major victory and precedent setting case for German efforts to combat terrorism through the courts. It also reaffirms the reputation of Presiding Judge Ottmar Breidling as one of Germany's most pro-active, thorough and committed legal figures in the field of counter-terrorism (Ref A). He expressed satisfaction that he was able to prove in court that AQ is a concrete organization and not, as the defense argued, a diffuse ideological movement. This, he said, was a prerequisite to the verdict. It will be important to watch the effects of this case on legal and political thinking in Germany, as well as how public debate and practice over electronic eavesdropping evolves. The "legal grey areas" mentioned in some media commentary refer to eavesdropping undertaken between the March 2, 2004 Court and the amendment of the law by the Bundestag on June 24, 2005. Editorial comment in the NRW media has been overwhelmingly positive regarding the admissibility and acceptability of eavesdropping of private living quarters in cases dealing with terrorism, a view law enforcement authorities here share.

¶6. (SBU) German critics of the Administration's legal approach to the War on Terrorism may use this case to illustrate the view that terrorism cases can be tried successfully in civilian

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courts. We note that Breidling also publicly highlighted the unusually long and complex legal process that produced his decision. He remains frustrated with the means currently at the disposal of the German state to try terrorism cases, calling them "too restrictive" and a "dull sword," comments some national papers found objectionable, arguing that a presiding judge should only pronounce on a case, and not express views about the adequacy of laws and procedures. The conviction was indeed only possible because police followed exactly the detailed legal prescriptions set forth by the Constitutional Court in its March 2004 ruling. Had any procedural oversights taken place along the way, the defendants would have been released.

BOYSE